> Igo-Kemenes et al….teaches a cosmetic composition in the form of water-in-oil or oil-in-water emulsion…The composition further contains another desirable component that is a pigment where the pigment can be inorganic or organic…The reference does not teach the gellant as cholesterol derivative…, the composition is impregnated in a support, or the condition that the gel is made.
>
> Iosilevich et al… teaches a make-up applicator formed of a cosmetic sponge material…in which a cosmetic substance such as a pigmented gel, liquid powder or other substance is impregnated within.
>
> It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the invention of Igo-Kemenes et al. which teaches a gel or emulsion containing pigments in the invention of Iosilevich et al. which teaches a make-up pad which can be impregnated with a pigmented gel composition. It would also have been obvious [to] select a gellant that would provide the best conditions for a low viscosity gel and to provide conditions in the process of preparing the gel whereby it does not gel until it is within the support.

Applicants respectfully traverse the present rejection. Before addressing the merits, however, it is instructive to briefly review the salient features of the present invention, and the effects achieved thereby. In its broadest embodiment, the invention provides a cosmetic or pharmaceutical composition comprising a non-rigid, porous support in which a low-viscosity, gellant-containing, otherwise unstable cosmetic or pharmaceutical formulation is incorporated. The invention is unique in that it provides a means for obtaining a suspension of pigment, without the necessity of incorporating waxy stabilizers or thickeners to hold the pigment in suspension. The formulation *per se* is one which, if simply placed in a bottle or jar, would otherwise be unstable, allowing the pigment to settle out. However, with the unique arrangement of placing the very lightly gelled formulation within a porous support, the consumer is provided with a thin, lightweight product which nonetheless can deliver color to the skin with the same evenness and efficiency of a standard cosmetic composition containing stabilizers.

There are a number of features of the present invention that are not to be found or even remotely suggested in either of the cited references. Igo-Kemenes at most teaches gelled cosmetic emulsions which may contain pigment. This is, as Applicants have acknowledged, standard in the art. The emulsions described are typical makeup formulations in that, as shown in the exemplary formulas, they are recommended to contain waxes and stabilizers(i.e., viscosity-increasing agents), such as beeswax, synthetic wax, and trihydroxystearin. More importantly, however, these emulsions are expressly stated as having "improved...product stability" (column , line 52). This is in direct contrast to the formulations forming part of the present compositions, in that in the present claims it is expressly required that the formulation be one that is, in the absence of the porous support, otherwise unstable. Thus, the Igo-Kemenes reference actually teaches away from the preparation of a very low-viscosity, otherwise unstable formulation as required by the present claims.

The Iosilevich reference provides no further teaching in this regard. The only teaching that could be considered remotely pertinent to the present invention is the use of an "applicator pad" to apply makeup to the skin. However, as with Igo-Kemenes, there is no disclosure of a formulation that would be unstable in the absence of the pad. Thus, the combination of the teachings of Igo-Kemenes with Iosilevich would at best lead to an applicator pad containing a stable formulation. There is simply no suggestion found in either reference which would lead one of ordinary skill in the art to impregnate an applicator pad with an otherwise unstable formulation. Indeed, it is contrary to the ordinary principles of cosmetic or pharmaceutical formulation to prepare a formulation which is generally unstable. Thus, a crucial element of the present claims is completely absent from both references.

The rejection states that it would have been obvious to select a gellant to provide the best conditions for a low viscosity gel, and it

would also be obvious to provide conditions in the process of preparing the gel so that it will not gel until it is within the support. However, these statements are made as simple conclusions, without any supporting evidence whatsoever. Indeed, as shown above, whatever teachings can be found in the two cited references would teach away from making formulations of the type contemplated by the present invention. The Examiner has provided no basis at all for the sweeping conclusion that these features would have been obvious, and the simple statement that it is so is entirely inadequate to support an obviousness rejection. The PTO is required to present evidence to support all obviousness rejections. *Ex parte Levengood*, 28 USPQ 2d 1300, 1301 (Bd. Patent App. & Interf., 1993), Also *Carella v. Starlight Archery*, 231 USPQ 644 (Fed.Cir. 1986). This has not been done in the Present rejection, and therefore, the rejection of claims 1-26 cannot stand. In view of the foregoing arguments, withdrawal of the rejection is therefore respectfully requested.

CONCLUSION

The present claims are believed to be in condition for allowance, and prompt issuance of a Notice of Allowance is respectfully solicited. The Examiner is encouraged to contact the undersigned by telephone if it is believed that discussion will resolve any outstanding issues.

Respectfully submitted,

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Date: 6/21/01

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